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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,549	10/14/2003	James O. Jensen	212/476	3479

7590 10/06/2006
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EXAMINER	
DEMILLE, DANTON D	
ART UNIT	PAPER NUMBER
3771	

DATE MAILED: 10/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/686,549

Applicant(s)

JENSEN ET AL.

Examiner

Danton DeMille

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 5/16/05.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application
- ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-9, drawn to a light weight chest compression housing, classified in class 601, subclass 44.
- II. Claims 10-33, drawn to a chest compression device including a channel beam, classified in class 601, subclass 44.

The inventions are distinct, each from the other because of the following reasons:

Inventions Group I and Group II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination Group I has separate utility such as for a chest compression device without the details of the channel beam. See MPEP § 806.05(d).

The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. David Crockett on 25 September 2006 a provisional election was made without traverse to prosecute the invention of Group II, claims 10-33. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-9 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned

with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 10 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-24 of copending Application No. 10/686,186 in view of Hwang. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to include a channel beam as taught by Hwang to support the belt within the platform and feed it to the chest of the patient.

Claims 11-33 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-24 of copending Application No. 10/686,186 in view of Hwang as applied to claim 10 above and further in view of Sherman et al. (US 6,066,106). It would have been obvious to one of ordinary skill in the art to further modify the pending claims to include the brake, clutch and gearbox as claimed as taught by Sherman to complete the details of the device.

Claim 10 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 10/686,184 in view of Hwang. It would have been obvious to modify the pending claims to include a channel beam as taught by Hwang to support the belt within the platform and feed it to the chest of the patient.

Claims 11-33 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-24 of copending Application No.

10/686,184 in view of Hwang as applied to claim 10 above and further in view of Sherman et al. (US 6,066,106). It would have been obvious to one of ordinary skill in the art to further modify the pending claims to include the brake, clutch and gearbox as claimed as taught by Sherman to complete the details of the device.

Claim 10 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-24 of copending Application No.

10/686,185 in view of Hwang. It would have been obvious to modify the pending claims to include a channel beam as taught by Hwang to support the belt within the platform and feed it to the chest of the patient.

Claims 11-33 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-24 of copending Application No. 10/686,185 in view of Hwang as applied to claim 10 above and further in view of Sherman et al. (US 6,066,106). It would have been obvious to one of ordinary skill in the art to further modify the pending claims to include the brake, clutch and gearbox as claimed as taught by Sherman to complete the details of the device.

Claim 10 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12 of copending Application No.

10/686,188 in view of Hwang. It would have been obvious to modify the pending claims to include a channel beam as taught by Hwang to support the belt within the platform and feed it to the chest of the patient.

Claims 11-33 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12 of copending Application No.

10/686,188 in view of Hwang as applied to claim 10 above and further in view of Sherman et al. (US 6,066,106). It would have been obvious to one of ordinary skill in the art to further modify the pending claims to include the brake, clutch and gearbox as claimed as taught by Sherman to complete the details of the device.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 10-16, 24-28 rejected under 35 U.S.C. 102(b) as being clearly anticipated by Sherman et al. (US 6,066,106).

It would appear that Sherman teaches a channel beam at 58 oriented laterally because it is located on the lateral side of the patient or extends laterally across the width of the housing. The drive spool 8 spans the channel beam and the belt is disposed within the channel. It would appear that Sherman anticipates the claimed invention.

Claims 17, 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sherman et al. (US 6,066,106).

There appears to be no unobviousness to the specific dimensions claimed. Such dimensions appear to be the approximate dimensions for a band and spool for a chest compression band.

Claim 19, 20, 32, 33 rejected under 35 U.S.C. 103(a) as being unpatentable over Sherman et al. (US 6,066,106) in view of Dragan.

Sherman teaches a slot 9 for mounting the belt to the spool. There appears to be no unobviousness to the exact means for attaching the belt to the spool. Dragan teaches an obvious equivalent alternative way of mounting the belt to the spool. It would have been obvious to one of ordinary skill in the art to modify Sherman to use the spline and slot arrangement taught by Dragan to mount the belt to the spool as an obvious equivalent alternative way of doing the same thing.

Regarding claim 20, Sherman also teaches a guide plate 57 that secures the belt and spline within the drive spool.

Claims 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sherman et al. (US 6,066,106) in view of Nichols.

Nichols teaches within the housing of a motor and driven spool it may be necessary to provide vent slits within the housing, paragraph 23. It would have been obvious to one of ordinary skill in the art to modify Sherman to include vent slits as taught by Nichols to cool the motor within the small housing.

Claim 10 rejected under 35 U.S.C. 102(b) as being clearly anticipated by Hwang.

Hwang teaches a channel beam 329 in the figure 20 embodiment.

Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hwang in view of Lach et al. (US 4,770,164).

The platform of Hwang supports the head and a distance down the length of the body. It is not clear how far down the length of the body or whether the platform can support the patient for transport however, Lach teaches column 10, lines 19-40, that platform approximately 30 inches by 36 inches is adequate for transporting an adult patient. It would have been obvious to

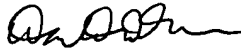
one of ordinary skill in the art to modify Hwang and size the platform to be able to transport the patient as taught by Lach so that the patient can be transported while maintaining the device on the patient so that CPR can continue to be administered.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danton DeMille whose telephone number is (571) 272-4974. The examiner can normally be reached on M-F from 8:30 to 6:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson, can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

1 October 2006


Danton DeMille
Primary Examiner
Art Unit 3764